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SUPREME COURT, U. S.

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1113

CHICOT LAND COMPANY, INC.,
Petitioner,

vs.

ALLEN EUGENE KELLY, SR. and
GARLAND WAYNE KELLY,
Respondents.

RESPONSE OF ANDERSON-TULLY COMPANY TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Pursuant to the request of this Honorable Court, Anderson-Tully Company files this response to the petition of Chicot Land Company, Inc. It is the position of Anderson-Tully Company that it is no longer a party in interest in this litigation, having been dismissed as a party defendant by the United States District Court for the Northern District of Mississippi, Greenville Division. No appeal or cross-appeal from that decision was taken by any of the other parties to this litigation and the judgment of the District Court has therefore become final.

Three separate actions were filed by Allen Eugene Kelly, Sr. and his son, Garland Wayne Kelly, against

Chicot Land Company, Inc., Anderson-Tully Company and others in the United States District Court aforesaid. These actions sought recovery of money damages for an alleged assault and were consolidated for trial. A jury having been waived, on final hearing the District Judge entered an order dated the 27th of June 1972, dismissing all actions as against the Anderson-Tully Company. See final judgments at page A39 and A40 of the Appendix to the petition for writ of certiorari.

From this judgment Chicot Land Company, Inc., J. C. Smith and Billie H. Bledsoe appealed to the United States Court of Appeals for the Fifth Circuit. No cross-appeal was sought by either Garland Wayne Kelly or Allen Eugene Kelly, Sr., plaintiffs-appellees below. No assignment of error was filed complaining of the action of the District Court in dismissing Anderson-Tully Company and in the briefs filed by the various parties to the appeal before the Fifth Circuit no error was alleged in that regard. While the opinion rendered by the Fifth Circuit did not discuss this facet of the case, the majority opinion did note:

> "Anderson-Tully was absolved of liability because Smith and Bledsoe were not acting in its behalf." (At page 4 of Appendix to petition for writ of certiorari)

We submit, therefore, that Anderson-Tully Company is no longer a party to this litigation, nor does it have any direct interest in the resolution of the legal points involved in this proceeding. All other litigants apparently concur in this position since Anderson-Tully Company was not noticed in the certificate of service to the petition for writ of certiorari (See page 25 of the petition), nor did the respondents, Allen Eugene Kelly, Sr. and Garland Wayne Kelly, elect to file any response to that petition until requested so to do by this Honorable Court. See

also the statement of Chicot Land Company, Inc. at page 5 of its petition:

> "In all cases, judgment was entered in favor of Anderson-Tully Company and that Defendant was finally dismissed."

CONCLUSION

On the basis of the foregoing, Anderson-Tully Company respectfully submits that if the petition for writ of certiorari should be granted, that the order should incorporate a finding that Anderson-Tully Company has been finally dismissed from this action and that it is not a party to the proceeding in this Honorable Court. Further, if the petition for writ of certiorari is granted and if upon a final hearing this cause is reversed and remanded, Anderson-Tully Company asks the Court to incorporate in the order and mandate a specific finding that Anderson-Tully Company is no longer a party litigant and that it should be dismissed from this proceeding on remand.

MITCHELL EMMETT WARD
Attorney for Anderson-Tully Company, Respondent

CERTIFICATE

I, Mitchell Emmett Ward, one of the attorneys of record for Anderson-Tully Company, Respondent herein, do hereby certify that I have this date mailed, postage prepaid, a true and correct copy of the foregoing Response to the Petition for Writ of Certiorari to the United States

Court of Appeals for the Fifth Circuit to the following persons:

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This 20th day of March, 1974.

MITCHELL EMMETT WARD